

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1282 of 1997

in

SPECIAL CIVIL APPLICATION No 4094 of 1984

with

LETTERS PATENT APPEAL No 1289 of 1998

in

SPECIAL CIVIL APPLICATION NO. 2386 of 1984

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE J.M.PANCHAL

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDBHAI CHHOTABHAI PATEL

Versus

GUJARAT DAIRY DEVELOPMENT CORPORATION LTD.

Appearance:

MR TR MISHRA for Appellant

MR KM PATEL for the Respondent

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE J.M.PANCHAL

Date of decision: 01 /08/2000

C.A.V. JUDGMENT : (Per : Panchal, J.)

Both these appeals, which are filed under clause 15 of the Letters Patent, are directed against common judgment dated August 15, 1997, rendered by the learned Single Judge, in Special Civil Application No.2386/84 and Special Civil Application No.4094/84. As the parties are common in both these appeals and as facts are inter-related, we propose to dispose of these two appeals by this common judgment.

2. The appellant is employed as Deputy General Manager (Production and Marketing) in Abad Dairy which is one of the Units being managed by Gujarat Dairy Development Corporation Ltd. By an order dated April 17, 1984 passed by the Managing Director of the Corporation, post of Deputy General Manager (Production and Marketing) Abad Dairy was abolished and the appellant was transferred and posted as Deputy General Manager, Rajkot Dairy. The appellant challenged that order in Special Civil Application No. 2386/84. Though the petition challenging transfer order was admitted for final hearing, no interim relief was granted. However, the appellant did not resume duties as Deputy General Manager, Rajkot Dairy. As the appellant disobeyed the order of transfer dated April 17, 1984, his services were brought to an end by an order dated August 1, 1984. The appellant challenged order terminating his services by way of filing Special Civil Application No. 4094/84. Therein, interim relief to stay operation of order terminating his services was prayed for, but that relief was not granted by the learned Single Judge. As a result, Letters Patent Appeal No. 360/84 was filed by the appellant, wherein implementation of order terminating his services was stayed. Though the order terminating services of the appellant was stayed, the appellant did not report for duty at Rajkot. Thereafter, both the petitions were taken-up together for final hearing by the learned Single Judge. The learned Single Judge concluded that order of transfer dated April 17, 1984 was not bad at all and, therefore, Special Civil Application No. 2386/84 in which transfer order was

challenged, was liable to be dismissed. It was noticed by the learned Single Judge that during the pendency of petitions, the appellant had attained the age of superannuation and, therefore, the learned Single Judge opined that while considering the question of legality of order by which services of the appellant were terminated, reinstatement of the appellant in service was out of question. The learned Single Judge noted that the order terminating services of the appellant was passed without affording an opportunity of being heard to the appellant and, therefore, was bad in law. However, the learned Single Judge held that as the appellant had not resumed duty at Rajkot pursuant to order of transfer dated April 17, 1984 till his superannuation, he was not entitled to compensation in lieu of reinstatement. In view of the above-referred to conclusions, the learned Single Judge has dismissed both the petitions filed by the appellant, giving rise to the present appeals.

3. We have heard the learned counsel for the parties and taken into consideration the documents forming part of the two petitions. The contention that order dated April 17, 1984 by which post of Deputy General Manager (Production and Marketing), Abad Dairy was abolished and the appellant was transferred and posted as Deputy General Manager, Rajkot Dairy, is bad in law because the appellant could not have been transferred, as conditions of service which are applicable to the employees of Ahmedabad Municipal Corporation, are applicable to his case, has no substance. It is true that initially Abad Dairy was being run by Ahmedabad Municipal Corporation and was subsequently purchased by the Government by Deed dated December 28, 1979 and was handed over to Gujarat Dairy Development Corporation Limited for management. But, it is wrong to contend that after the appellant was absorbed in service of Gujarat Dairy Development Corporation Ltd. he was not liable to be transferred. Transfer is an incident of service and, therefore, it will have to be held that it was one of the implied terms on which the appellant was absorbed in service of Gujarat Dairy Development Corporation Ltd. Moreover, at the time when the Dairy was purchased by the State Government from Municipal Corporation by Deed dated December 28, 1979, the appellant was serving as an Assistant Milk Distribution Officer and was thereafter promoted to the post of Deputy General Manager, which post is transferable under the regulations framed by the Gujarat Dairy Development Corporation Ltd. Therefore, the contention that the appellant was not liable to be transferred is rightly negatived by the learned Single Judge. It is settled law that creation and abolition of

post is prerogative of the employer and unless actuated by malafide, is not subject to judicial review. The appellant had not laid any factual foundation in the petitions to establish his case that abolition of post at Ahmedabad and his transfer to Rajkot was actuated by any malafide. Under the circumstances, we are of the opinion that the learned Single Judge was justified in dismissing Special Civil Application No. 2386/84, in which transfer order was challenged, as being devoid of any substance. Consequently, Letters Patent Appeal No. 1289/98, which is directed against judgment rendered in Special Civil Application No. 2386/84 is liable to be dismissed.

4. So far as Letters Patent Appeal No.1282/97 is concerned, we notice that order terminating services of the appellant was passed without affording any opportunity of hearing to the appellant and was, therefore, bad in law. However, it is an admitted position that during the pendency of the petition, the appellant had attained the age of superannuation and, therefore, the learned Single Judge was perfectly justified in observing that question of reinstatement of the appellant in service had become academic in nature. As reinstatement in service was not possible, the learned Single Judge proceeded to consider the question whether any compensation could be awarded to the appellant in lieu of reinstatement. The learned Single Judge has not awarded compensation because the appellant had failed to resume duties at the transferred place. As noticed in the earlier part of this judgment, the operation of transfer order dated April 17, 1984 was not stayed by the Court in Special Civil Application No. 2386/84. Therefore, it was incumbent upon the appellant to resume duties at the transferred place. Though services of the appellant were terminated by order dated August 1, 1984, operation of the said order was stayed by the Division Bench in Letters Patent Appeal No. 360/84, but the appellant after obtaining interim relief in his favour did not report for duty at Rajkot. The contention that the appellant was prevented by the respondent from joining duty at Rajkot has no factual basis. Except making a bald statement, the appellant has not produced any material on record to establish that at any point of time he had gone to the respondent's Office at Rajkot and was prevented by any of the officers of the respondent-Corporation from joining duties. The fact remains that despite the stay of order terminating services of the appellant, the appellant had not joined the post at Rajkot. The appellant was holding a high post in the respondent-Corporation and conduct of the appellant in not joining at the transferred place after

obtaining stay of order by which his services were terminated, has got to be viewed seriously. The learned Single Judge has taken into consideration this reprehensible conduct of the appellant while considering the question whether any compensation should be awarded to the appellant in lieu of reinstatement. After noticing this reprehensible conduct of the appellant, the learned Single Judge has deduced that the appellant is not entitled to compensation in lieu of reinstatement because the principle of 'no work, no pay' is attracted. Having regard to the facts of the case, we are of the opinion that no error is committed by the learned Single Judge in not awarding compensation to the appellant in lieu of reinstatement. On the facts and in the circumstances of the case, the learned Single Judge was justified in dismissing Special Civil Application No. 4094/84 in which the order terminating services of the appellant was challenged. Consequently, Letters Patent Appeal No. 1282/97, which is directed against judgment rendered in Special Civil Application No.4094/84 is also liable to be dismissed.

For the foregoing reasons, both the appeals fail and are dismissed, with no orders as to costs.

(D.M.Dharmadhikari,C.J.)

(J.M.Panchal, J.)

(patel)